

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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THOMAS MARIO RANGE,

Petitioner,

v.

Case No. 09-10945

MARY BERGHUIS,

Respondent.

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**ORDER DENYING PETITIONER'S MOTION FOR DISCOVERY**

Petitioner moves for discovery. Petitioner has submitted an amended habeas petition, Respondent has filed an answer and the state court record, and Petitioner has filed a reply. Petitioner requests discovery of an expert witness's forensic report. According to Petitioner, the expert witness testified at Petitioner's trial but the report was not admitted into evidence. Petitioner claims that the expert's testimony was improperly admitted at trial.

Rule 5 of the Rules Governing Section 2254 Cases requires a respondent to submit with its answer all transcripts and documents relevant to the determination of the habeas petition. 28 U.S.C. foll. § 2254, Rule 5. A court may also require that the record be expanded to include additional material relevant to the resolution of the habeas petition. 28 U.S.C. foll. § 2254, Rule 7. Rule 8 of the Rules Governing Section 2254 Cases provides, in pertinent part:

If the petition is not dismissed at a previous stage in the proceeding, the judge, after the answer and the transcript and record of state court proceedings are filed, shall, upon review of those proceedings and of the expanded record, if any, determine whether an evidentiary hearing is

required.

Petitioner's motion for discovery was filed after Respondent filed the state court material, but Petitioner has not shown that the requested report, which was not admitted into evidence at trial, is necessary for the proper resolution of this matter. Moreover, "[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Rule 6 of the Rules Governing Section 2254 Cases provides that a habeas court may authorize a party to conduct discovery upon a showing of good cause. 28 U.S.C. foll. § 2254, Rule 6(a). Petitioner has not made the requisite showing of "good cause." Accordingly,

IT IS ORDERED that Petitioner's motion for discovery [Dkt. #15] is DENIED.

s/Robert H. Cleland  
ROBERT H. CLELAND  
UNITED STATES DISTRICT JUDGE

Dated: March 18, 2013

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, March 18, 2013, by electronic and/or ordinary mail.

s/Lisa Wagner  
Case Manager and Deputy Clerk  
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